

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, September 5, 2006  
**Time:** 7:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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### ROLL CALL

Mayor Esteves called the meeting to order at 7:00 PM.

**PRESENT:** Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano, Livengood and Polanski

**ABSENT:** None

### PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

### INVOCATION

Very Rev Father Giris Hanna of the St. James Orthodox Church, Milpitas was not present, but Councilmember Giordano mentioned the 14 months old church in the City. Ms. Giordano gave a few remarks from her speech at Mission College earlier this summer, on leadership.

### MINUTES

**MOTION:** approve minutes of August 15, 2006 City Council meeting, as submitted.

Motion/Second: Vice Mayor Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

### SCHEDULE OF MEETINGS

**MOTION:** to approve the Schedule of Meetings, as amended.

Councilmember Polanski stated that the Capital Improvement Program subcommittee was moved to Thursday, September 7 at 5:30 PM. Councilmember Livengood announced the Utility Rate Subcommittee would meet on Tues, September 26 at 7:00 PM. Vice Mayor Gomez said the Finance Subcommittee was moved from Wednesday, September 6 to Tuesday, September 5 at 5:00 PM.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

### PRESENTATION

**Fire Battalion Chief Scott Brown** accepted the Mayor's Proclamation of "Patriot Day" to be celebrated in Milpitas on Monday, September 11, 2006, to honor those who lost their lives due to the attacks on the U.S. five years ago.

### PUBLIC FORUM

**Jeanette Bumagat**, Sunnyvale resident and Milpitas volunteer, stated she was the girls softball coach at St. John, and had coached youth basketball with the City. She was starting up a new recreational youth league for ages 4-16, for Milpitas fast pitch softball league (ASA). She requested City support for girls' softball through use of the City's softball fields.

### ANNOUNCEMENTS

**City Manager Charles Lawson** honored recently retired Police Chief Thomas Nishisaka, who was present with his wife Hue Huynh. Mr. Nishisaka thanked the many police officers, dispatchers and clerical staff he had worked with over his 41 years with the City, as the longest serving employee in the City's history. Mayor Esteves offered his personal thanks on behalf of all

the citizens, and thanked him for providing such excellent service, noting the decreased crime rate in Milpitas. Councilmember Livengood provided additional gracious comments as well.

**Councilmember Giordano** announced on Saturday, September 16 there would be a Samuel Ayer High School reunion for all classes from 10:00 am – 5:00 pm at Cardoza Park. She had heard from residents with concern about shopping cart blight noted around the City and inquired about electronic technology that can be used to keep carts in the parking lot, as was installed in a plaza nearby in San Jose. Lastly, she asked staff to provide an update about the status of the Farmers Market in Milpitas.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

None

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as amended.

Staff requested moving item No. 3 to be heard prior to the Redevelopment Agency meeting.

Motion/Second: Councilmember Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Mayor Esteves announced he would vote No on Items No. 6 and 7. He requested to remove Item No. 8 for discussion. Councilmember Polanski announced she would vote no on Items 6 and 7.

Motion/Second: Councilmember Polanski/Councilmember Livengood

Motion carried by a vote of: AYES: 5  
NOES: 0

**\* 1. Mayor's Recommendations  
for Commission Appointments**

Sister Cities Commission:

Appointed Beverly McCarter (current Alternate No. 1) as a voting member to a term expiring September 2009.

Appointed Oliver Wan (current Alternate No. 2) as Alternate No. 1 to a term expiring September 2008.

Bicycle Transportation Advisory Commission (BTAC):

Re-appointed Cheryl Bunnell as Alternate No. 1 to a term expiring August 2008.

Re-appointed Rene Briones to a full term expiring August 2009.

**\* 2. Public Art Committee  
Manual**

Approved the new Public Art Committee Manual, as drafted by the Master Plan Subcommittee and as recommended by the full PAC at its July 24 meeting.

**\* 5. Ordinance No. 43.204**

Waived the Second Reading and Adopted Traffic Ordinance No. 43.204, an Amendment to the Traffic Code, implementing Truck Route Restrictions on Milmont Drive between California Circle and Dixon Landing Road and Dempsey Road between Yosemite Drive and S. Park Victoria Drive, as introduced on August 15, 2006.

**\* 6. Ordinance No. 101.19**

Waived the Second Reading and Adopted Ordinance No. 101.19 for Amendments to the Contract Between the Board of Administration of California Public Employees' Retirement System (PERS) and the City Council of the City of Milpitas (regarding benefits for police members only), as introduced on August 15, 2006.

Motion carried by a vote of: AYES: 3  
NOES: 2 (Esteves, Polanski)

- \* **7.** Ordinance No. 262.3      Waived the Second Reading and Adopted Ordinance No. 262.3 regarding the definition of a lobbyist, as introduced on August 15, 2006.
- Motion carried by a vote of:      AYES: 3  
NOES: 2 (Esteves, Polanski)
- \* **9.** Award Construction Contract for Singley Area Street Rehabilitation, Phase IV, Project No. 8181 at Santa Rita, and Annual Street Resurfacing 2006
1. Appropriated \$164,000 from Traffic Congestion Relief Fund to Project No. 4229.
  2. Awarded Construction Contract for the Singley Area Street Rehabilitation, Phase IV, Project No. 8181 (Santa Rita), and Annual Street Resurfacing 2006, Project No. 4229 (Holly Way and Lomer Way) to Alaniz Construction, Inc., in the amount of \$172,745.09.
- \* **10.** Automated Evidence and Property Management System      Approved the purchase of an automated evidence and property management system from Porter Lee Corporation in the amount of \$24,885.52.
- The Barcoded Evidence Analysis, Statistics, and Tracking (BEAST) system from Porter Lee Corporation was found to best meet the needs of the Milpitas Police Department.
- \* **11.** Approve Contract for Uniform Rental and Laundry Services      Authorized the City Manager to enter into a separate contract with AmeriPride, selected by the originating agency – the City of San Jose. Incorporated by reference the original solicitation, terms, conditions, and pricing, for a not-to-exceed amount of \$36,000 per year for two years, with an option for three additional one-year periods, subject to approval as to form by the City Attorney.
- \* **12.** Annual Software Support and Fees for Peele Technologies      Authorized payment of annual support and maintenance, in the amount of \$18,675, to Peele Technologies (re-seller). The City used document management software from Documentum Corp. (manufacturer) in addition to several scanning devices to support electronic document imaging, used for internal/external electronic document retrieval.
- \* **13.** Authorize Payments to Four Vendors      Approved the following four payments:
1. \$21,902.00 to Acco Engineered Systems to remove and replace a second failed compressor in the Energy Labs HVAC system at City Hall.
  2. \$21,541.75 to Tri-American for the purchase of a Bax 250 Pavement Marker Applicator. Tri-American is the sole authorized distributor of Bax brand Pavement Marker Applicators in California.
  3. \$25,556.25 to Great West Equipment, Inc. for the purchase of a Layton Paver model H 500C with electric hydraulics and heat and hitch arms. Great West Equipment, Inc. is the sole authorized distributor of Layton Pavers in California.
  4. \$113,990.00 to Action Target, Inc. for the purchase and installation of a lead containment system at the existing police firearms range. Action Target manufactured and installed the City's target, control, and ballistic protection system, and was the only vendor capable of fully meeting all design and installation criteria of the new equipment.

## **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

- RA 1. CALL TO ORDER**      Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:08 PM.
- RA 2. ROLL CALL**      **PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez and Agency/Councilmembers Giordano, Livengood and Polanski
- ABSENT:** None
- RA 3. MEETING MINUTES**      Motion: approve the Redevelopment Agency minutes of August 15, 2006, including joint meeting with the City Council, as submitted.

Motion/Second: Agency/Councilmember Giordano/Agency/Councilmember Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**RA 4.** Approval of Agenda and Consent Calendar

Motion: approve the agenda and RDA consent calendar

Motion/Second: Agency/Councilmember Giordano/ Agency/Councilmember Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**RA 5.** New Library and Parking Garage Projects Update

City Engineer Greg Armendariz updated the Agency/Council on the City's new Library Project (due to the fact that CIP Manager Mark Rogge was unavailable at this meeting).

On August 31, pre-qualification statements were due with eight submittals received. That was deemed a very good response, considering current market conditions.

On October 24, final plans for bids would be issued, with bids due in December. That will mark a significant step toward the building project's progress.

Presently, the City was on track with the budget for the Library. A Project Stabilization Agreement (PSA) would be sought, and within it would be offered a great educational opportunity: partner with the high school and the building trades, working with MUSD, to get high school students the opportunity to see tradesmen at work. This is a unique idea put forward by CIP Manager Mr. Rogge.

Tuesday, September 26, was the proposed date for a low-key ground breaking ceremony for the Parking Garage building, as it gets underway.

Councilmember Livengood stated he was supportive of the unique plan to offer some career information to our local students, in a "Career Day" type event proposed by CIP Manager Mr. Rogge.

Mayor Esteves mentioned the Library Subcommittee (on which he and Mr. Livengood serve) where it had been highlighted that the project stayed on budget and on plan.

Councilmembers thanked Mr. Armendariz for his informative progress report.

**RA 6.** Report from Finance Director on the Unaudited Financial Report for End of the Fiscal Year 2005-06

Finance Director Emma Karlen provided an overall financial picture for the City, based on an unaudited Fiscal Year 2005-06 close. Her handouts displayed that overall, in nearly all categories, actual income/revenues were higher than the budget anticipated.

She reviewed eight major categories of City revenues. Ms. Karlen highlighted several one-time revenues that would not be repeated in future budget years, including state motor vehicles license fees reimbursement, proceeds from the sale of the former City Manager's residence, and reimbursement funds for SB90 claims (due to state-mandated activities reimbursed to cities).

Furthermore, an explanation of the transfer of Redevelopment Agency money to the City's general fund was given, particularly noting the subject of the acquisition of eight properties by the Agency from the City. The money was not needed yet, and therefore, staff recommended deferring the transfer to FY 2006-07.

Councilmember Giordano inquired about the breakdown of building permits revenue. Staff explained that the majority of funds was from new housing starts, as well as commercial development and Mid Town projects.

An increase in the Fund Balance of \$3.46 million dollars was noted, when originally it was budgeted at only \$20,000. The Finance Director recommended setting aside \$2.4 million into the reserves for the unfunded liability of the retiree medical benefits.

Councilmember Livengood inquired about the transfer of money from the RDA to the City. He referred to an August 2004 memo from the former City Manager about how this plan would take place. How much money has actually been transferred, he asked? Staff replied, none. This year, none was transferred since it was not needed to date, due to so much savings having occurred.

Mr. Livengood asked further about the reserve balance. The undesignated reserve was the same as last year, but it required a set aside amount for the retiree medical benefits. He asked about the PERS stabilization fund and when it began. Staff replied four years ago. When was it used, asked Mr. Livengood? Ms. Karlen said when faced with PERS increases higher than expected, the City would tap into that fund as needed. This year, the City would not use any of that fund.

Councilmember Giordano gave thanks for the good fiscal news. Personally, she wanted to thank current the City Manager and complimented his work specifically with maintaining City services and the budget in check.

Mayor Esteves asked questions about the eight RDA-owned properties, with \$29 million due to City. Staff responded to his inquiries, explaining that the funds that could be transferred from RDA to the City had not been moved this year since the budget has balanced. That step would carry over to the next fiscal year.

Motion: note receipt of the year-end financial report from the Finance Director

Motion/Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 5  
NOES: 0

**\* RA 7.** Fiscal Year 2005-06  
Year-End Budget Adjustments

1. Approved Fiscal Year 2005-06 year-end budget appropriations and transfers as itemized in the budget change form prepared.
2. Approved three specific Capital Improvement Projects - CP 4133, CP 5074 and CP 4173 - to remain open.

**\* RA 8.** Accept 2006-07 Final  
Budget and 2006-2011 Final  
Capital Improvement Program

Received and filed the two financial documents, the budget and the CIP for the next years.

**\* RA 9.** Approve PG&E  
Distribution Service and  
Extension Agreement for the  
new Library and Midtown East  
Parking Garage

Approved the agreement with Pacific Gas & Electric and authorized payment of the associated \$48,313.33 fee to PG&E from Project No. 8153.

**\* RA 10.** Award Construction  
Contract: Main Sewage Pump  
Station, Access Improvements

Awarded construction contract for Project No. 6079, Phase II, to Duran & Venables Inc., in the amount of \$226,919.46.

**\* RA 11.** Change Order for N.  
Main St Utilities Project—  
Weller Ln to Carlo St, Under  
ground Utility District No. 5

Approved contract change order in the amount of \$85,000 to D'arcy Harty Construction, Inc. for additional work for N. Main Street Utilities, Project No. 8153.

**\* RA 12.** Authorization to Enter

Authorized entry into negotiations with The Matteson Companies to provide

Negotiations with Matteson Cos. for Affordable Housing Units      Redevelopment Agency financial assistance from its 20% Affordable Housing Set-Aside Fund. Matteson had a proposal to develop a 126 unit for-sale condominium project on a 2.72-acre site, located on South Main Street and South Abel Street.

\* **RA 13.** Owner Participation Agreement with Western Pacific Housing, LLC      Adopted Resolution No. RA 265 approving execution of an Owner Participation Agreement with Western Pacific Housing, LLC with certain findings, relative to development of a 153-unit residential for-sale townhome project, located on So. Main Street near Montague Expressway.

**RA 14. ADJOURNMENT**      Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 9:35 PM.

**REPORT OF OFFICERS**      Items were approved on the Consent Calendar.

## **NEW BUSINESS**

**3.** Report from Valley Transportation Authority about BART status and Authorize Comment Letter      This item was discussed prior to the Redevelopment Agency meeting.

City Traffic Engineer Jaime Rodriguez came before Council, thanked the Council for accommodating the VTA staff, who were present to give an overview of the Supplemental Environmental Impact Report process underway, with regard to BART extension to Santa Clara County.

VTA representatives present at the meeting were Ms. Marian Lee-Skowroneck, Mr. Jim Lawson, and Mr. Tom Fitzwater.

Mr. Lawson updated Council on the supplemental environmental impact report process and the purpose for the SEIR – to study additional alternatives at some locations of the BART crossings. VTA and BART would like to be good neighbors, be conscientious about spending public money, with over \$700 million dollars in the federal review process presently. He recognized the need for frugal spending.

Ms. Lee discussed BART as already approved in the Final EIR, along with the project schedule as planned for the 16-mile BART extension from Warm Springs Station in Fremont, into Milpitas, then into the City of San Jose, with a planned station at Montague/Capitol Expressway in Milpitas. The final EIR document was completed in December 2004, which included 2,000 parking demand spaces for Milpitas.

VTA explained three specific design issues newly proposed for study in the SEIR:

1. The option of an **at-grade crossing at Dixon Landing Rd**: in the FEIR, a retained cut design option (trench BART) was approved, where the road stayed where it was. At 35% engineering, VTA would study having BART at-grade and put Dixon Landing Rd. underneath the railway, a potentially safer option. VTA would have to mitigate this option for the City.

In response to a question from Councilmember Livengood, VTA staff stated there was no real mitigation offered at the time for the shopping center at Dixon Landing Rd., at the railroad crossing.

2. The option of **BART in a retained cut design or aerial structure** at Montague Expressway at Capitol. A retained cut “long” (that is BART in a trench) was approved in the FEIR. New options to study in SEIR were a retained cut “short” (with many challenges to this design), an aerial long, and aerial short.

3. The option of **surface parking at the Montague/Capitol BART Station**. Approved in the FEIR was a north parking garage structure with a south bus transit center. New options to study in the SEIR were a combination BART parking lot with land identified for potential future surface parking, and adding more area to the “footprint” for parking in the study. The option would consider potentially all surface parking at the station.

Councilmembers asked a variety of questions, indicating strong support for the City's adopted Transit Area Plan, which called for structured parking garage at the BART station, along with dense residential development.

Ms. Lee of the VTA reviewed a calendar of activities planned for the SEIR study. Mr. Fitzwater of the VTA summarized design changes suggested in three nearby cities: Fremont, San Jose, and Santa Clara. The SEIR document was due for circulation next May in 2007.

City Traffic Engineer Jaime Rodriguez thanked VTA staff for attending the Council meeting. Thursday, September 7 was the close of the scoping period for comments on the SEIR process. A construction mitigation plan for Milpitas was essential in the BART construction plan, staff noted.

Vice Mayor Gomez asked if mitigation would deal with a property owner or existing businesses or both (mitigation steps)? Staff replied with the property owner.

Staff recommended that the City Council instruct VTA to eliminate the aerial option at Montague crossing, in the SEIR, and to maintain BART in the retained cut short option. Additionally, staff recommended the City preference to eliminate surface area parking plans at the BART station, despite VTA's desire to study those options. Explicit mitigations could be suggested in Milpitas, should VTA go forward with that part of its study. Mr. Rodriguez formally requested that Council authorize the City Manager to send a letter stating three specific remarks with the preferences noted above.

Several Councilmembers expressed that they did not support surface parking at the Montague Milpitas BART station and there was agreement about the aerial design.

Councilmember Giordano noted the array of items for which mitigation would be necessary and wanted to know about mitigation for vibrations. She asked that VTA include that issue to be studied in the EIR, with mitigations offered if necessary.

Mayor Esteves asked for remarks from the audience.

Speakers:

**Jim O'Hara** property owner in the BART-proposed area, stated he had met with BART engineering staff about noise, vibration and aesthetics at the new BART stations, and learned that BART would treat the land use as it presently existed, not relative to the Milpitas Transit Area Plan future land use at that location. He felt the studies needed to be based on current market information.

**Don Peoples**, a Community Working group member, felt that land was precious - especially in close proximity to a BART station, was concerned about surface area use, and the negative impact on adjacent landholders.

Motion: note receipt of oral report from Valley Transportation Authority; and, authorize the City Manager to issue a comment letter to the VTA, based on Council discussion.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

**4. Request regarding Waiver of Solid Waste Service**

At 8:47 PM, City Utility Engineer Marilyn Nickel reported to Council, explaining that they would hear a request for a waiver of mandatory solid waste service. She cited nine specific concerns, which did not support the request, and explained why the City required garbage pick-up service for all homeowner residents. Thus, the staff's recommendation was to deny the waiver request.

Councilmember Livengood inquired how often did the City grant such a request and Ms. Nickel was not aware of any since 1999.

The Mayor then asked for public speakers on this matter.

Speakers:

**Ed Kandefer**, of 514 Vista Spring Ct in Spring Valley Heights since 1992, presented a letter asking for a waiver.

**Rich Tatom**, has lived in Spring Valley for 10 years, where his home was 500 feet from the street curb. He did not want to pay for a service that he would not use.

**Marsha Wang**, spoke on behalf of herself and her husband Chien Min Wan, who had resided in Milpitas for 24 years, where they enjoy living very much. Garbage service was never used, but they were being charged for it. She stated they do not need this service.

Letters from these speakers were distributed to the City Council, City Manager, City Attorney and City Clerk.

Mayor Esteves asked staff to explain the Measure Z impact on this matter, since it was mentioned in the letters presented. It was passed by voters, intending to maintain City services in the City-contiguous area. If property was located outside the Urban Service Area, the City would not extend City services, including utilities. Spring Valley is located in City limits, but outside Urban Service Area. However, it was noted that solid waste services were not identified in the Measure Z text, per the City Attorney. Clearly, solid waste services were omitted from the Measure text, while other public utility services were identified in that ballot measure.

Councilmember Livengood asked what happened with garbage service. About 20 homes were in the neighborhood, and garbage trucks go up to Spring Valley neighborhood every week, staff reported. He wanted a subcommittee to look at this issue more in detail (maybe utility subcommittee). He needed more information to consider the request.

Councilmember Polanski asked when did the City start charging Spring Valley residents for garbage service. The reply was about 6-9 months ago, following an audit, which revealed that this subdivision was not included properly. Further questions arose about when garbage service started, where, who was getting the service, etc.

Mayor Esteves wanted to know more about the franchise agreement and whether the City definition was included in that contract.

Council suggested to defer this matter, and in order to make a decision, first to go back to the Utility Rate Subcommittee at its next meeting (Sept. 26), and return after that to the City Council with further information.

Motion: research, gather more information, defer to a later meeting; motion included inviting residents and BFI to the September 26 Utility Rate Subcommittee meeting, and then returning to City Council at a later date for a decision on the current request

Motion/second: Councilmember Livengood/ Councilmember Polanski

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

## ORDINANCES

Ordinances No. 43.204, 101.19, and 262.3 were adopted on the Consent Calendar.

## RESOLUTION



**8. Resolution Amending Fee  
Schedule for Planning and  
Zoning Private Job Applications**

This item was removed from the Consent Calendar.

Planning Director Tom Williams explained the staff request to lift the \$8,000 maximum cap fee on "Private Job" (aka PJ) accounts for City planning work. He noted that some jobs go up to \$40,000 - \$50,000 in fees, for example, meanwhile the current limit was \$8,000 (4 times the \$2,000 initial deposit fee). The request was in line with the municipal code fee schedule, which called for full cost recovery.

Mayor Esteves asked how this concept compared to other cities, and mentioned business development plans. Staff responded that across the state, cities have implemented full cost recovery for developments and it was quite standard to operate as recommended. Milpitas's planning fee schedule was in the middle of the range of charges within Santa Clara County.

The Mayor gave reason for his point of view, wanting to support businesses coming here and small business development. He was not supportive of increasing any fee to businesses that would discourage them in Milpitas, and wanted to stay competitive.

Motion: Adopt Resolution amending the fee schedule to lift the cap charged on Private Job applicants for Planning and Zoning services

Motion/Second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of: AYES: 4  
NOES: 1 (Esteves)

**BIDS AND CONTRACTS**

Three items were adopted on the Consent Calendar.

**CLAIMS AND DEMANDS**

Items were adopted on the Consent Calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 9:41 PM.

**The foregoing minutes were approved by the Milpitas City Council as  
submitted on September 19, 2006.**

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**Mary Lavelle  
City Clerk**